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FEDERAL COMMUNICATIONS COMMISSION
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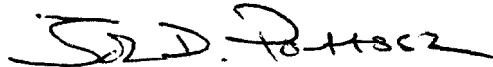
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: **MM Docket No. 95-176**
Closed Captioning and Video Description

Dear Mr. Caton:

Transmitted herewith on behalf of Grupo Televisa, S.A. are an original and eleven copies of its Comments in response to the Commission's Notice of Proposed Rulemaking in MM Docket No. 95-176 (FCC 97-4, released January 17, 1997).

Sincerely,



John D. Poutasse

Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)

MM Docket No. 95-176

COMMENTS OF GRUPO TELEVISA, S.A.

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Its Attorneys

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COMMENTS OF GRUPO TELEVISA, S.A.

Grupo Televisa, S.A. ("Televisa"), pursuant to Section 1.415 of the Commission's Rules, hereby comments on the Commission's Notice of Proposed Rulemaking, FCC 97-4 (released January 17, 1997) ("NPRM"), in the above-captioned proceeding.

I. Introduction

Televisa is a Mexican corporation engaged in the international entertainment business, including the production, sale and distribution of Spanish-language programming. The largest producer of Spanish-language television programming in the world, Televisa in 1995 produced more than 50,000 hours of programming for broadcast on its network stations, and licensed more

than 54,000 hours of programming to over 75 countries throughout the world, including the United States. Through a long-term program license agreement with the Univision Television Network, which together with its owned television stations constitutes the largest Spanish-language television broadcast company in the United States ("Univision"), Televisa estimates that its programming reaches more than 90% of all Spanish-speaking households in this country via cable and satellite-interconnected broadcast affiliates. As a consequence, Televisa has a substantial interest in the outcome of this proceeding and is uniquely qualified to comment on the Commission's proposed closed captioning rules as they may be applied to Spanish-language programming.

II. The Commission's Jurisdiction Does Not Extend To Program Owners And Producers, Either Foreign Or Domestic.

Televisa agrees with the Commission's conclusion that video programming providers such as broadcast stations and cable operators, not program producers or owners, should be held responsible for compliance with the Commission's closed captioning rules. However, Televisa disagrees with the suggestion that Section 713 of the Communications Act of 1934, as amended, may have conferred on the Commission jurisdiction to regulate program owners or producers. Neither the express language of the statute nor its legislative history may be read to so dramatically extend the Commission's jurisdiction to encompass such entities. Indeed, as the legislative history makes clear, Congress merely recognized that, as a practical matter, it will often

be more efficient and economical for program producers to caption video programming at the production stage.¹

More significantly, foreign program owners and producers clearly may not be regulated by the Commission. Although there is no indication in the NPRM that the Commission believes Congress even contemplated such an unprecedented extension of its authority, the Commission nevertheless should confirm that foreign program owners and producers are beyond the scope of its jurisdiction.

III. The Commission Should Exempt Foreign Language Programming Produced Outside The United States From Its Closed Captioning Rules.

Televisa fully agrees with the Commission's conclusion that the economic burden of captioning certain types of foreign language programming justifies an exemption from the Commission's closed captioning rules.² Indeed, Televisa submits that because the burden of captioning video programming that is produced outside the United States in a non-English speaking country ("non-U.S. foreign language programming") far outweighs the potential benefits to be derived from such captioning, all non-U.S. foreign language programming -- including programming first published both before and after August 8, 1997 -- should be exempt from a requirement to provide captions.

¹ H.R. Report 104-204, 104th Cong., 1st Sess. (1995) ("House Report") at 114.

² NPRM at 33, ¶ 72.

A. Owners And Producers Of Non-U.S. Foreign Language Programming Lack The Equipment, Expertise And Access To Financial Resources Necessary To Caption Video Programming.

Closed captioning was introduced in the United States in the 1970s,³ and consequently U.S. video programming owners, producers and providers have more than 20 years of experience in captioning their video product. In contrast, owners and producers of non-U.S. foreign language programming -- the entities that practicality may dictate will actually caption video programming, regardless of how the Commission allocates responsibility for compliance with its captioning rules -- have little or no experience with captioning video programming. In Mexico, for example, where there is no requirement to caption video programs and where technical equipment and standards for the creation and transmission of such captions do not exist, no video programming owners or producers regularly caption their video product. Therefore, owners and producers of non-U.S. foreign language programming have neither the equipment nor the expertise required to provide closed captions. Moreover, while there are in excess of 100 suppliers of closed captioning services in the United States,⁴ there are currently no private companies in Mexico that provide such services. Clearly, if the Commission were to require that non-U.S. foreign language video programming contain captions, owners and producers of such programming currently would be unable to do so.

Although the Commission has taken into consideration the cost of captioning video programming in the United States, such cost estimates are wholly irrelevant for countries that

³ Id. at 16, ¶ 23.

⁴ Id. at 7, ¶ 7.

currently lack the ability and capacity to caption video programming. In order to comply with a captioning requirement, owners and producers of such programming would have to purchase the necessary captioning equipment, including computer hardware and software, encoding devices and other costly equipment, hire and train a large number of professional captioners, a costly and time consuming process, and modify production and distribution schedules to accommodate the insertion of captions. Thus, while the cost in the United States to caption a single hour of programming in 1990 was approximately \$2,500 and required an estimated 20 to 30 person-hours,⁵ the cost to caption the same hour of programming in Mexico or any other non-U.S. country would be several times higher and would require many more person-hours.⁶

These cost considerations become all the more significant in light of the fact that non-U.S. program owners and producers will not have access to the same financial resources to caption their video product as exist in this country. In the United States, federal grants provided by the Department of Education have financed approximately 40% of the cost of all captioned video programming, with a significant portion of the remaining funds being provided by corporate advertisers, charities and foundations.⁷ In contrast, in Mexico financial support for captioning does not exist. More significantly, even if the Commission were to require that non-U.S. foreign

⁵ Closed Captioning and Video Description of Video Programming, Notice of Inquiry, 11 FCC Rcd 4912, 4922, ¶ 18 (1995) (“NOI”).

⁶ Moreover, production budgets for Spanish-language programming produced outside the United States normally are significantly smaller than those for English-language programming produced in this country. As a consequence, the additional costs associated with captioning Spanish-language programming represent a much larger percentage of overall program production costs than in the United States.

⁷ NPRM at 9-10, ¶ 10.

language programs contain captions, it is very unlikely that such funds will become available in Mexico because the vast majority of television sets in Mexico are not equipped to receive closed captions. In addition, because the standard of living in Mexico is generally lower than in the United States, television sets are not replaced as frequently as they are in this country. Under these circumstances, there is absolutely no incentive for the Mexican government, corporate advertisers or charitable organizations to supply funds for captioning because viewers in Mexico generally would be unable to view those captions even if they so desired. Consequently, owners and producers of non-U.S. foreign language programming would have to bear the full cost of captioning such programs.

B. It Would Be Economically Inefficient To Require Non-U.S. Foreign Language Programming Distributed Worldwide To Contain Captions.

Televisa distributes its programming to over 75 countries throughout the world, and has approximately 116,000 half-hours of television programming in its library available for licensing. None of the countries in which Televisa distributes its programming require such programming to contain captions. In the United States, over 4,000 hours of Televisa's programming is shown on Univision annually, and an additional 5,000 hours is shown on the Galavision cable service. Moreover, Univision almost always exercises its call on Televisa's programming after that programming has been released uncaptioned in Mexico (or, in a very small number of cases, in another non-U.S. country). To require Televisa to caption 9,000 hours of its Spanish-language programming annually for the United States alone would be prohibitively expensive and economically inefficient.

C. Mandatory Captioning Of Non-U.S. Foreign Language Programming Would Reduce The Diversity Of Programming Available In The United States.

If the Commission were to require that non-U.S. foreign language programming contain captions, either owners and producers of such programs, or their ultimate U.S. distributor, would be required to arrange for captioning. However, both Congress and the Commission have recognized that it is clearly more efficient for program owners and producers to caption video programming at the production stage.⁸ Yet in light of the anticipated inability of owners and producers of non-U.S. foreign language programming to obtain financial assistance to defray the significant expense that captioning will entail, such owners and producers may well be forced to discontinue the production of programming for which the economic return is outweighed by the cost of production with captions, thus reducing the diversity of programming available both in the United States and abroad.

Moreover, the same program frequently is licensed to distributors in more than one country, yet, as previously noted, only the United States has a captioning requirement. As a result, the added cost of captioning these programs cannot be passed on to all distributors, only to those in the United States. Consequently, U.S. distributors of such programs are very likely to elect to eliminate from their programming schedules those programs for which the cost of captioning would represent an uneconomical expenditure when compared with anticipated revenues from that program, and the diversity of foreign-language programming available in the United States will decline.

⁸ House Report at 114; NPRM at 18, ¶ 30.

D. The Potential Market For Closed Captioned Spanish-Language Programming Is Inadequate To Justify The Costs That Mandatory Captioning Would Entail.

Current U.S. Census data demonstrate that the potential U.S. market for closed captioned Spanish-language video programming produced in Mexico and other Spanish-speaking countries is inadequate to justify the cost of such captioning. Only 7.5% of the current U.S. population is Spanish-speaking (approximately 17,339,000 persons), while just .8% of the U.S. population can speak only Spanish (approximately 1,845,000 persons).⁹ Since the Bureau of the Census estimates that approximately 10% of the U.S. population has a hearing disability,¹⁰ it is possible to estimate that in the United States today there are only 1,733,000 hearing-disabled Spanish-speaking persons, and 185,000 persons with such a disability who speak only Spanish.

The Commission has recognized that the size of the potential audience for foreign language programming is relevant to its determination whether to exempt such programming from the closed captioning rules based on economic burden.¹¹ Although the above figures are imprecise, they illustrate the extremely limited size of the market for closed captioned Spanish-language programming in the United States, and, when coupled with the potential costs

⁹ Statistics based on information collected during the 1990 Census (provided by U.S. Department of Commerce, Bureau of the Census, Education and Stratification Branch, February 21, 1997).

¹⁰ According to the 1990 Census, the current U.S. population is estimated to be 230 million persons. Of this population, approximately 23 million persons, or 10% of the total U.S. population, have a hearing disability. NOI at 4912, ¶ 1.

¹¹ NPRM at 33, ¶ 72.


associated with the captioning of such programming, clearly demonstrate that it would be economically inefficient to caption Spanish-language programming.

IV. Conclusion

All non-U.S. foreign language programming should be exempt from the Commission's closed captioning rules. This exemption will not undermine Congress' goal of ensuring that a sufficient quantity of closed captioned programs reaches the American public. Non-U.S. foreign language programming represents a very small percentage of the video programming broadcast in the United States, and a requirement to caption such programming would inevitably result in fewer non-U.S. foreign language programs being made available to the American public, a result against which Congress specifically cautioned.

Respectfully submitted,

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